

J. THEODORE ELLIS
D. E. PACK

IBLA 78-635

Decided June 27, 1979

Appeals from decisions of New Mexico State Office, Bureau of Land Management, dismissing protests as to the awarding of oil and gas lease Parcel No. NM 621, Serial No. NM 33658.

Affirmed.

1. Oil and Gas Leases: Applications: Attorney-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

A handwritten signature may be presumed to be written by the person named. Where an attorney-in-fact or an agent does not sign a drawing entry card, the provisions of 43 CFR 3102.6-1 are not invoked.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorney-in-fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest

The fact that the addresses of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest

Where there is no evidence of any violation of the regulations in the record, the burden is on the protestant to submit competent evidence of an accusation that there is an agreement giving a filing service an enforceable interest in the lease, absent which the protest is properly rejected. Allegations that there was a contract between the offeror and a filing service in which the filing service withholds an overriding royalty interest from the offeror and participates in the proceeds, without evidence, is not sufficient to show that the offeror was not a sole party in interest.

4. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Assignments or Transfers

Where the purchaser of an oil and gas lease asserts that he purchased the lease from the offeror whose drawing entry card was drawn with first priority, for cash consideration without knowledge of any irregularities or violation of the regulations, he is considered to be a bona fide purchaser, and his lease is not subject to cancellation unless prima facie evidence is presented to the contrary.

APPEARANCES: D. E. Pack, J. Theodore Ellis, Thomas H. Connelly, Robert G. Basgall, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

D. E. Pack and J. Theodore Ellis appeal from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated July 27, 1978, dismissing their protests as to awarding oil and gas lease Parcel No. NM 621 to Robert G. Basgall. In his protest, Pack warned BLM to stop all official action in regard to assigning the lease to another party before complete and final adjudication.

Basgall's drawing entry card (DEC) was drawn with first priority in the June 7, 1978, simultaneous drawing. Ellis' card was drawn with second priority. Pack's card was entered in the drawing but was not one of the three cards drawn. The lease issued to Basgall on July 18, 1978, with an effective date of August 1, 1978. Basgall sold the lease to Thomas H. Connelly on June 23, 1978, and the application for assignment of the lease was filed with BLM on June 29, 1978.

In his protest filed July 24, 1978, (after the lease issued) Ellis objected to issuing the lease to Basgall for the following reasons: (1) the address, P.O. Box 9031, Denver, Colorado 80209, given on the DEC was false; (2) 43 CFR 3102.6(a)(2) was violated because separate statements of interest by both offeror and agent were not filed with the DEC as required when an agency relationship is involved; (3) 43 CFR 3102.7 was violated because of failure to disclose other parties in interest; (4) 43 CFR 3112.5-2, the regulation prohibiting multiple filings, was violated because 90 percent of the cards filed for Parcel No. NM 621 showed the address of P.O. Box 9031, thereby giving the agent filing service a great advantage in winning if any one of the many cards with this address were drawn. Pack's protest also cited violations of the regulations. He protested the assignment or transfer of the lease to another party before complete and final adjudication.

The State Office dismissed both protests on July 27, 1978, for failure of the protestant to furnish evidence to prove violations of the regulations. In dismissing Ellis' protest, the State Office explained that the fact that the addresses of the offeror and the filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein violation of 43 CFR 3112.5-2.

On July 31, 1978, Ellis filed an amendment to his protest in which he stated: "It is established as a fact that the foregoing [Basgall's offer] is in violation of section 3112.5-2 -- Multiple Filings." Pack also filed an amendment to his protest in which he elaborated on alleged violations of the regulations and stated that the address used by Basgall on his DEC is not the legitimate address of any filing service.

Both amendments were dismissed for failure of protestants to furnish any evidence in support of their allegations.

On September 13, 1978, the State Office issued an amendment to its July 27, 1978, decisions, requiring that the second adverse party, Connelly, be served with a copy of the appeal.

In his statement of reasons, Pack contends that the filing service had a clause in its contract calling for the agent to withhold

a certain percent of overriding royalty and/or other consideration in the lease in violation of 43 CFR 3102.7 because Basgall did not disclose other parties in interest. He presumes that the signature on Basgall's DEC is a rubber-stamped facsimile, but he contends that regardless of the method of affixing the signature, or by whom, the offer was formulated by a filing service, thus invoking the disclosure rule of 43 CFR 3102.6-1 which was not observed by either the offeror or the agent-in-fact. Pack reiterates his contention that the offer also violates 43 CFR 3112.5-2, the regulation prohibiting multiple filings.

In his statement of reasons, Ellis contends that the offer to lease was formulated by someone other than the offeror, thus invoking 43 CFR 3102.6-1, which requires that separate statements of interest must be filed by the offeror and the agent when an agency situation is involved.

Ellis alleges that Basgall is in violation of 43 CFR 3102.7 by failing to disclose other parties in interest. He explains:

Proof of this is that, a search of the microfilm of NM 621, reveals that the filing service involved filed a total of 32 offers using the address of P.O. Box 9031, Denver, CO 80209 (the service used by Robert G. Basgall). The filing service withholds an overriding royalty interest from the Offeror, and participates in the proceeds. An examination of their contract will reveal this. This is also exhibited by the fact that the purchaser, Thomas H. Connelly, the "second adverse party" obtained from the filing service Assignments of the lease through the filing service. Robert G. Basgall admits that when he "signed up" with the filing agent, he "signed a lot of papers" which would handle any sales so that he would not need to be involved in a sale at the time he won. Such papers were updated at the time of signing so that they could be used when a lease was won; also, the filing service did not furnish him with copies of the papers which he signed.

Ellis claims that through the arrangements of his filing agent, Connelly, purchaser of the lease, received an assignment of the lease before its issuance and was therefore a "party in interest." He contends that P.O. Box 9031, Denver, Co. 80209 is registered in the name of Neibeiger, which is a false name used by a filing agent for deception.

Ellis points out that he is required by regulation to serve adverse parties with documents relating to this appeal but that the BLM's amended decision of September 13, 1978, naming Connelly as a second adverse party does not extend the time for compliance with the regulations.

Further, Ellis explains that there were 80 leases drawn on June 7, 1978, only 6 of which were issued in July 1978. Parcel No. NM 621, he notes, was the 56th lease to be drawn out of 80, but was one of the first 6 to be issued.

Finally, Ellis contends that although he protested, the lease was "rushed" through for processing.

On October 2, 1978, Connelly requested dismissal of the appeals filed by Pack and Ellis for the following reasons: (1) The appeals were not timely filed; (2) he purchased the lease from Basgall on June 23, 1978, for cash consideration without knowledge of any irregularities or violation of any provision of the law, if there were any, and therefore he is a bona fide purchaser under 43 CFR 3102.1-2. Assignment of the lease was filed with BLM on June 29, 1978.

On October 6, 1978, Basgall also filed a motion for dismissal on the grounds set forth by Connelly.

The file contains a total of six requests for dismissal with responses filed by Pack. The main points in the responses are as follows: (1) The appeal had been timely filed; (2) a transcription of a telephone conversation which took place 2 days after the drawing showed that Basgall had already sold the lease (Pack contends that this is prima facie evidence that an "arrangement" had been made before the May 7, 1978, drawing); (3) a handwriting analysis shows that the copy of Connelly's motion to dismiss which was sent to Pack was signed by someone other than Connelly; (4) there was collusion between Connelly and BLM personnel who helped to speed up issuance of the lease, and who may have been bribed by Connelly; (5) a copy of a return receipt card -- which was addressed to Connelly at P.O. Box 9031, the same address used by Basgall which Pack claims is the address of a filing service, and signed by the same authorized agent who signed Basgall's card -- shows that Connelly is a party in collusion with the filing service; (6) Connelly is a party in interest as defined by 43 CFR 3102.7 in that he knew where to contact Basgall through his agent in Denver and receive an assignment of the lease prior to issuance and final adjudication; (7) neither the leasing service nor Connelly has filed the statements required by 43 CFR 3102.7. Connelly denies all charges made by Pack.

At the outset, we find that the appeals in the case were timely filed. Also, we agree with appellants that they were entitled to additional time to meet the regulations concerning service after Connelly was named as an adverse party. All information submitted by appellants has been considered by the Board.

[1] Examination of the signature on Basgall's DEC reveals that it was signed by hand with a ball point pen and there is nothing about the signature to make one suspect that it is a facsimile.

The presumption that a handwritten signature is by the person named provides a satisfactory basis for concluding that no agent was involved in the signing. William Miller, 36 IBLA 349, 351 (1978); Robert C. Leary, 27 IBLA 296, 299 (1976). When the signature is a holographic one, there is no need for BLM to inquire into the circumstance of the offer. Unless the facts show that an attorney-in-fact or agent signed the DEC, 43 CFR 3102.6-1 does not apply. William Miller, *supra*; Elias C. Bacil, 34 IBLA 322, 324 (1978). Since there is no showing that the agent signed the DEC, Basgall is not in violation for failure to file statements required by 43 CFR 3102.6-1.

[2, 3] Appellants contend that Basgall has violated 43 CFR 3102.7, the regulation requiring that statements of interest be filed by other parties if the offeror is not the sole party in interest. They allege that both the leasing service and Connelly should have been named as other parties in interest. Appellants claim that P.O. Box 9031 is the address of a leasing service. A search of the microfilm of parcel No. NM 621 reveals that the alleged filing service filed a total of 32 offers using the address of P.O. Box 9031.

Appellants claim that according to the contract between the offeror and filing service, the filing service withholds an overriding royalty interest from the offeror and participates in the proceeds. No evidence has been submitted to support the contention that the leasing service has an "interest" in the lease within the meaning of 43 CFR 3100.0-5(b). Virginia L. Jones, 34 IBLA 188 (1978); *cf.* Alfred L. Easterday, 34 IBLA 195 (1978). ^{1/} Nor does the fact that the addresses of the filing service (if there is one involved) and the offeror are identical in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2. D. E. Pack, 31 IBLA 283 (1977).

Appellants attempt to show that Connelly had an agreement with Basgall prior to the drawing, thereby making him a party in interest. Pack submitted a notarized transcription of a recorded telephone conversation between a Bruce W. Browning allegedly employed by Dome Petroleum, Ltd., Alberta, Canada, calling Basgall 2 days after the drawing. The transcription showed that Basgall had already sold the lease. From this, Pack concludes that there was prima facie evidence of an agreement or understanding between Basgall and Connelly prior to the drawing in violation of 43 CFR 3102.7. Pack states that such agreement is an interest as defined by 43 CFR 3100.0-5(b). Connelly replied that he checked with Dome Petroleum, Ltd., which informed him that they have no knowledge of a Bruce W. Browning being employed by Dome. Also Connelly says he was informed by Basgall that Basgall had no recollection of a telephone conversation with Browning. He contends that there is no evidence in the transcript which controverts

^{1/} This case on appeal to court was remanded in Coyer v. Andrus, Civil No. C-78-104 (D. Wyo., filed Feb. 12, 1979).

the fact that he is a bona fide purchaser. Pack also submitted the opinion of graphologist Gwen Sampson, who analyzed the signatures on Connelly's motion to dismiss of September 28, 1978.

Where, as here, there is no evidence of any violation of the regulations in the record, the burden is on the protestant to submit competent evidence of an accusation that there is an agreement giving the filing service an enforceable interest in the lease, absent which the protest is properly rejected. Jack Mask, 41 IBLA 147 (1979); Lee S. Bielski, 39 IBLA 211, 86 I.D. 80 (1979). Appellant has not submitted such evidence.

[4] In his motion for dismissal of the appeals, Connelly states that he purchased the lease from Basgall for consideration with no knowledge of any violation of the regulations. Since we have found that Basgall's offer was acceptable, it is unnecessary to decide whether Basgall is a bona fide purchaser. However, we note that 30 U.S.C. § 184(h)(2) (1976) provides in part:

The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, interest in a lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

30 U.S.C. § 184(i) (1976) states:

Effective September 21, 1959, any person, association, or corporation who is a party to any proceeding with respect to a violation of any provision of this chapter, whether initiated prior to said date or thereafter, shall have the right to be dismissed promptly as such a party upon showing that he holds and acquired as a bona fide purchaser the interest involving him as such a party without violating any provisions of this chapter. No hearing upon any such showing shall be required unless the Secretary presents prima facie evidence indicating a possible violation of this chapter on the part of the alleged bona fide purchaser.

See also 43 CFR 3102.1-2(a) and (c).

There is no prima facie evidence that a possible violation exists. The handwriting analysis and transcript of the alleged telephone conversation are inadequate to establish prima facie that Connelly was not a bona fide purchaser.

Pack cites D. E. Pack, 31 IBLA 283 (1977), for the proposition that where a protest has been made against the validity of a DEC, it is improper to issue a lease in response to the protested DEC before the protest is finally dismissed by the Board of Land Appeals. The facts in that case, however, can be distinguished from the facts in the case in issue. In D. E. Pack, supra, the lease was issued after the protest was filed. In the present case, the lease was issued before the protest was filed. The assignment filed with BLM has not been approved. Nothing has taken place in this case which would violate the holding in D. E. Pack, supra. Leases are not issued in numerical sequence, and there is no significance in the fact that this lease and five other leases from the June drawing were issued before the other leases.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

